



Applicant: Brian F. Monahan
Serial No.: 09/808,490
For: RAPID RESPONSE MARKETING
Filed: March 14, 2001
Examiner: Johnna R. Loftis Art Unit: 3623

DECLARATION UNDER 37 C.F.R. §1.132

I, Brian F. Monahan, a resident of Mill Valley, California, U.S.A., declare as follows:

1. THAT I am the same Brian F. Monahan who is named as the sole inventor in the above identified pending application for United States Letters Patent (the "Invention");
2. THAT I am a experienced advertising executive having practiced in this area since receiving a Bachelor of Arts degree from Georgetown University in 1992; that I am currently employed as a Senior Vice President by McCann Erickson, San Francisco, U.S.A. with supervisory responsibilities for the Microsoft Corp. advertising account; that I am the author of a number of publications involving advertising and have participated as an invited lecturer as an authority on advertising in a significant number of domestic and international advertising conferences;
3. THAT I am technically skilled in the marketing area that is the subject of the Invention; that I am familiar with the prosecution history of the above-identified Application for United States Letters Patent; and that I have read and understand the Non-Final Office Action mailed 11 May 2007 pertaining thereto and the references cited therein;
5. THAT the Examiner has rejected claims 1-15 under 35 U.S.C. §103(a) as being obvious and unpatentable over *d'Eon et al.* (U.S. Pat. No. 6,006,197) in view of Robinson (U.S. Pat. No. 5,918,014) and further in view of Cannon (U.S. Pat. No. 6,286,005);
6. THAT the art rejection may be summarized and commented on as follows:
 - (i) *d'Eon et al.* teaches an internet advertising performance information gathering system that measures the effectiveness of web advertisements by correlating web site impressions (clicks)

with post-impression transactional activity (i.e., the purchasing of products or services advertise on the web site)

;and

(ii) Robinson, similarly to d'Eon, teaches the gathering of internet advertising information (i.e., tracking clicks or activity on a particular Web ad) to correlate such information with selecting ads for viewers with similar activities, and also teaches changing web advertisements using a rotation schedule; The Examiner's characterization of the combination of the internet art of d'Eon and Robinson is essentially correct; and

; and

(iii) Cannon is a pre-launch media campaign planning tool that primarily teaches the gathering of TV viewer information, directed primarily to optimizing TV delivery to certain demographic audiences; Canon also teaches the gathering of readership information for magazines, newspapers and web pages to use such information/data to plan ads for a particular viewer or viewing community; for planning of advertising campaigns;

(iv) the Examiner combines the internet art of d'Eon and Robinson with the media planning art of Canon to reach the conclusion that the all claims of the subject invention are obvious under 35 U.S.C §103(a);

[the Examiner on p. 8, the Action, states ".....while the combination of d'Eon and Robinson teaches gathering performance information regarding internet marketing performance, the combination does not explicitly teach a business enterprise selecting at least two marketing communications activities from the group of: magazine, newspaper, radio, television and website. However, based on Cannon (column 6, lines 1-14) ..."It is old and well known to gather and analyze other types of advertising media such as television, magazines and newspapers to determine effectiveness.....It would have been obvious to one of ordinary skill in the art at the time of the invention that a business would carry out more than one type of advertising/marketing communications and would gather and analyze performance data for each type of marketing communications to gain useful information to make advertising efforts more effective."; [note: the state of the art limitations of acquisition of offline media performance data to post-campaign measurements at the end of a fixed-period-of-time campaign at the time the invention was filed are not properly considered by the Examiner.]

7. THAT nowhere in the cited art, providing insight in determining obviousness under 35 USC §103(a), is there any teaching, suggestion or motivation to combine the references that create the case for obviousness, with no motivation arising from the nature of the problem to be solved, the teachings of the prior art and the knowledge of persons of ordinary skill in the art; and although it is my understanding that the lack of teaching, suggestion or motivation in the art is not completely definitive of determining unobviousness, it is nevertheless a salient factor, and the Examiner has not provided any reason why a person of ordinary skill in the art would combine the prior art elements in the claimed manner; while holding that that internet media technology is applicable to offline media in contrast to the statements herein of the undersigned as an expert in the art providing reasons why combination of the prior art elements, and the filling of gaps (i.e., the functional unavailability of offline granular data) relative to the claimed multimedia invention, would

not have occurred;

8. THAT the state of the art, i.e., the scope and content of the art, at the time the invention was filed was as follows:

In 2001, Internet advertising comprised less than 10% of the total US advertising expenditures. As no other advertising medium is delivered and received by a computer, no other medium can census count individual delivery of ad messages, let alone the impact any one ad impression has on a the desired business objective (awareness, perception change, sales, etc). The state of the art of crafting a multi-media advertising campaign was to target the advertising to the most desired group of people. At the end of a time period, usually three (3) months, the campaign would be evaluated to see how well it was believed to be reaching the target audience. If that flight of advertising generally corresponded with positive business results, the campaign would be refined to better deliver the target audience and continued. Businesses have progressively used advances in technology to get a more instantaneous read on their health. Scanner data is available daily, foot traffic is counted weekly, and as more and more customer activity moved to the Internet, that data could be parsed instantly. However, there was at the time the invention was filed no obvious, practical, or technically feasible way to correlate this increasingly real-time data set of business results to individual advertisements of the multi-media advertising messages designed to trigger them. For example, if you bought product X, was it the newspaper ad, a TV commercial, an internet ad or a combination that deserves credit? The foresight of the present invention solves that problem by granular data capture of all marketing stimuli and of business results. ["Granular Data" refers to finely itemized data. For example, it's one thing to know how many sales you did in a day. It's another to break it out by minute and by item purchased. Then you can look back at what product was mentioned in what ad, when, and shown to whom, and then apply the cost to provide a dashboard report.] Processing and evaluating this data by standard means (i.e., regression analysis and chronological modeling) allows the marketer to read which specific marketing investment in the multi-media ad campaign was working the best at a desired business goal. The limitations of the state of the art with respect to capture of granular performance data at the time the invention was filed taught away from and caused even the most experienced of advertising professionals not to think of ongoing measurement of their offline media components of their multi-media ad campaigns, and not to think of real-time evaluating, reacting, and modifying any ongoing offline multi-media ad portfolio component in view of desired business objective(s).

9. THAT it would not be obvious to one skilled in the art to combine the internet teachings of d'Eon and Robinson with the computer system of Cannon to arrive at the present invention, and this combination does not in fact produce the invention;

10. THAT the present invention claiming a unified system for tracking, evaluating, constantly updating and reacting interactively on an ongoing basis to selected individual media in a multiple-media advertising types measured against their ability to drive business objectives with reporting combined into a single dashboard view analyzed and optimized in real time was not taught by the prior art of record nor the general knowledge of those in the art and the art does not suggest any motivation to modify or combine any knowledge or art at the time the invention was made, with any reasonable expectation of success to arrive at the present invention;

11. THAT it was neither practiced, nor likely even considered possible, and surely not considered practical, at the time the invention was made, to build marketing reporting and performance optimizing dashboards that give Brands an all-up coordinated view on how their various tactics are doing, to provide real time correlation of each and every medium of multi-channel marketing investments to business objectives, and to have these dashboards pull from various data sources (i.e., media contracts, media delivery information, survey information, call center volume, store foot traffic, sales scanner data, focus group responses, or web site traffic or combinations thereof);
12. THAT there is a great distinction between technology applicable to the internet medium and technology applicable to offline media at the time the invention was filed and it is an error to so state or imply interchangeability with hindsight;
13. THAT I am not aware of any interrelated teachings from patents, from technical publications, from the marketplace, or from the background knowledge of individuals of ordinary skill in the art, that would give any reason for a person of ordinary skill in the advertising art to combine art elements in the manner claimed by the patent application at issue; and that the Examiner has not identified any reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed; and that I conclude that the invention in the subject Application is neither obvious nor predictable from the cited references;
14. THAT I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Declared at Mill Valley, CA, U.S.A. this 9th day of
Oct., 2007.



Brian F. Monahan